criticism of the Department of Defense or this Agency.

(5) The applicability of the FOIA depends on the existence of an ''identifiable record'' (5 U.S.C. 552(a)(3)). Accordingly, if the DIA has no record containing information requested by a member of the public, it is under no obligation to compile information to create or obtain such a record.

(6) The mission of the DIA does not encompass regulatory or decision-making matters in the sense of a public use agency; therefore, extensive reading room material for the general public is not available.

(7) Pursuant to 5 U.S.C. 552 (a)(4)(A) fees may apply with regard to services rendered the public under the Freedom of Information Act (See appendix A to this part). With regard to fees, the specific guidance of DoD, as set forth in DoD 5400.7–R will be followed.

(b) This basic policy is subject to the exemptions recognized in 5 U.S.C. 552 (b) and discussed in section 292.6.

§ 292.4 Specific policy.

(a) *Definition of a Record*. The products of data compilation, such as all books, papers, maps, and photographs, machine readable materials or other documentary materials, regardless of physical form or characteristics, made or received by the DIA in connection with the transaction of public business and in the DIA's possession and control at the time the FOIA request is made.

(b) The following are not included within the definition of the word ''record:''

(1) Objects or articles, such as structures, furniture, paintings, sculptures, three-dimensional models, vehicles and equipment, whatever their historical value or value as evidence.

(2) Administrative tools by which records are created, stored, and retrieved, if not created or used as sources of information about organizations, policies, functions, decisions, or procedures of a DoD Component. Normally, computer software, including source code, object code, and listings of source and object codes, regardless of medium are not agency records. (This does not include the underlying data which is processed and produced by such software and which may in some instances be stored with the software.) Exceptions to this position are outlined in paragraph (b)(2)(i) of this section.

(i) In some instances, computer software may have to be treated as an agency record and processed under the FOIA. These situations are rare, and shall be treated on a case-by-case basis. Examples of when computer software may have to be treated as an agency record are:

(A) When the data are embedded within the software and cannot be extracted without the software. In this situation, both the data and the software must be reviewed for release or denial under the FOIA.

(B) When the software itself reveals information about organizations, policies, functions, decisions, or procedures of the Agency, such as computer models used to forecast budget outlays, calculate system costs, or optimization models on travel costs.

(3) Anything that is not a tangible or documentary record, such as an individual's memory or oral communication.

(4) Personal notes of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee, and not distributed to other agency employees for their official use.

(5) Information stored within a computer for which there is no existing computer program or printout for retrieval of the requested information.

(c) The prior application of FOR OFFICIAL USE ONLY (FOUO) markings is not a conclusive basis for withholding a record that is requested under the FOIA. When such a record is requested, the information in it will be evaluated to determine whether, under current circumstances, FOIA exemptions apply and whether a significant and legitimate Governmental purpose is served by withholding the record or portions of it.

(d) A record must exist and be in the possession or control of the DIA at the time of the request to be considered subject to this regulation. There is no obligation to create, compile, or obtain a record to satisfy an FOIA request.

(e) *Identification of the Record.* (1) Identification of the record desired is the responsibility of the member of the public who requests a record. The requester must provide a description of the desired record that enables the DIA to locate the record with a reasonable amount of effort. The Act does not authorize ''fishing expeditions.'' When the DIA receives a request that does not ''reasonably describe'' the requested record, it will notify the requester of the deficiency. The deficiency should be highlighted in a distinctive letter, asking the requester to provide the type of information outlined below. This Agency is not obligated to act on the request until the requester responds to the distinctive letter. When practicable, the DIA will offer assistance to the requester in identifying the records sought and in reformulating the request to reduce the burden on the Agency in complying with the Act.

(2) The following guidelines are provided to deal with ''fishing expedition'' requests and are based on the principle of reasonable effort. Descriptive information about a record may be divided into two broad categories.

(i) Category I is file-related and includes information such as type of record (for example, memorandum), title, index citation, subject area, date the record was created, and originator.

(ii) Category II is event-related and includes the circumstances that resulted in the record being created or the date and circumstances surrounding the event the record covers.

(3) Generally, a record is not reasonably described unless the description contains sufficient Category I information to permit the conduct of an organized, non-random search based on the DIA's filing arrangements and existing retrieval systems, or unless the record contains enough Category II information to permit inference of the Category I elements needed to conduct such a search.

(f) Requests for records may be denied only when the official designated in § 292.8 determines that such denial is authorized by the FOIA.

(g) When an initial request is denied, the requester will be apprised of the following:

(1) The basis for the refusal shall be explained to the requester, in writing, identifying the applicable statutory exemption or exemptions invoked under provisions of this part.

(2) When the final refusal is based in whole or in part on a security classification, the explanation shall include a determination that the record meets the criteria and rationale of the governing Executive Order, and that this determination is based on a declassification review.

(3) The final denial shall include the name and title or position of the official responsible for the denial.

(4) The response shall advise the requester with regard to denied information whether or not any reasonably segregable portions were found.

(5) The response shall advise the requester of the right to appeal within 60 days of the date of the initial denial letter.

(h)(1) Initial availability, releasability, and cost determinations will normally be made within 10 working days of the date on which a written request for an identifiable record is received by the DIA. If, due to unusual circumstances, additional time is needed, a written notification of the delay will be forwarded to the requester within the 10 working day period. This notification will briefly explain the circumstances for the delay and indicate the anticipated date for a substantive response. The period of delay, by law, may not exceed 10 additional working days.

(2) Requests shall be processed in order of receipt. However, this does not preclude DIA from completing action on a request which can easily be answered, regardless of its ranking within the order of receipt. DIA may expedite action on a request regardless of its ranking within the order of receipt upon a showing of exceptional need or urgency. Exceptional need or urgency is determined at the discretion of DIA.

§ 292.5 How the public submits requests for records.

(a) Requests to obtain copies of records must be made in writing. The requests should contain at least the following information: